**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 8955 of 1999**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**ANILBHAI GAJANAN VYAS - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 4 - Respondent(s)**

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**Appearance :**
MR NM KAPADIA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR PRASHANT G DESAI for Respondent(s) : 3,
MR DC DAVE for Respondent(s) : 4,
NOTICE SERVED for Respondent(s) : 5,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 8/12/2006**

**ORAL JUDGMENT**

1.By way of this petition under Article 226 of the Constitution of India, the petitioner, whose land was acquired by the State Government under the

provisions of the Land Acquisition Act along with other lands, has prayed for an appropriate writ, direction and/or order for quashing and setting aside the order dated 24th January, 1997 passed by the State Government ( The Under Secretary, Revenue Department, State of Gujarat, Gandhinagar) and communicated to the respondent No.4 (The Administrator, Asharam Bapu Ashram, Surat) vide communication dated 27.1.1997 by which, the State Government has regularized the unauthorized encroachment made by the respondent No.4 over the land of the petitioner as well as other agriculturists which was acquired by the State Government for Surat Irrigation Division, Surat under the provisions of the Land Acquisition Act. A further prayer is also made directing the respondent Nos. 1 to 3 and 5 i.e. the Secretary, Narmada and Water Resource Department, The District Collector, Surat, The Commissioner of Municipal Corporation, Surat, and The Secretary, Revenue Department to pass orders granting the lands of the petitioner on permanent basis to the petitioner as

has been done in case of other similarly situated agriculturists by directing them to remove the unauthorized and illegal encroachment on the land of the petitioner.

2.The questions which are posed for consideration of this Court in the present Special Civil Application are (i) what is important : public interest or private interest? (ii) How far the State Government was justified in regularizing the encroachment made by the respondent No.4 – a religious trust, though the lands were acquired under the provisions of the Land Acquisition Act and were needed by Surat Municipal Corporation for public purpose i.e. Water Works Project ? (iii) When there is a conflict between public interest and private interest – who has to give way ?

3.It is the case on behalf of the petitioner that :-

The petitioner was holding certain lands bearing Survey No. 104/1 admeasuring about 2-Acres, 11-

Gunthas and 53-Ares at village Jahangirpura, situated in Surat. The lands of the petitioner and other agriculturists were situated on the river bank of river Tapi. Due to heavy flood, people of Surat city and other towns situated on the river bank were experiencing devastations and damages and some citizens also lost their lives and agricultural lands near the bank of river Tapi turned into river bed and land owners sustained heavy loss and precious agricultural lands were destroyed and rendered useless for agricultural purpose. In order to protect the soil, a project to construct embarkments (Palas) was planned. The project – scheme was sanctioned by the State Government and the lands of the petitioner as well as other agriculturists came to be acquired in the year 1977 by initiating proceedings under the Land Acquisition Act.

That after the lands were acquired and actually put to use for which it was acquired, as per the policy of the State Government to make and allot optimum

use of the agricultural land for agriculturist purpose, the State Government decided and directed the Collector to grant the said lands to erstwhile owners i.e. the petitioner and other agriculturists on yearly rental basis i.e. Ek Sali basis on payment of premium/rent to the Collector. The petitioner and other agriculturists were accordingly in occupation of the said land allotted to them from year to year on Ek Sali basis and they were cultivating the same. Thus, for constructing Tapi Embarkment Scheme popularly known as “Pala Yojana” large parcels of lands abutting on river Tapi and belonging to the petitioner as well as other agriculturist of village Rander, Adajan, Jahangirpura, etc., were acquired. On completion of said scheme, large parcels of valuable agricultural lands remained surplus with the State Government. The Government decided to hand over the excess lands to the original owners. The agriculturists of village Rander, Adajan, Jahangirpura and other villages made a representations from time to time to the State Government for release of surplus land

remaining unutilized. Though the lands were acquired along with the lands of the petitioner, the possession of the land of the petitioner was not taken over by the Government and the petitioner as well as other similarly situated persons were allowed to cultivate their lands on Ek Sali basis till the Government actually takes possession for the purpose of Pala Yojana. The petitioner also paid revenue to the Irrigation Department. That since the land of the petitioner and other similarly situated persons – agriculturists were not required further as the flood embarkments were constructed, the State Government took a decision to return the land to the original land owners and in respect of the lands of Adajan village the State Government decided to return the agricultural lands to the original land owners on payment of Rs.25/- per meter and withdrawing appeals vide order dated 10.2.1991 (Annexure – C). That in respect of the lands of village Rander, the State Government passed an order on 28.19.1993 returning the land to the original land owners (Annexure – D) and the

State Government decided to release 245011 mts of excess land remaining after completion of Pala Yojana and authorized the Collector to regrant of the said lands to the original land owners on permanent basis. The petitioner also made several requests oral as well as written to the different authorities to regrant the land of Survey No.104/1 of Jahangirpura but the land was not regranted (Annexure – E Collectively). In respect of the release of lands of Jahangirpura, the respondent No.1 vide its order dated 21.9.1993 bearing No. F.W./A/1092/1362 (7) J-1, decided to return the unutilized lands of the petitioner and other agriculturists. In the meantime, the Surat Municipal Corporation decided to construct water works for the people of the areas of Jahangirpura, Rander and Adajan by passing necessary resolutions for acquiring lands bearing Survey Nos.103 to 109/4 from the State Government. The State Government vide its order dated 21.9.1993 agreed in principle to sell the same to the Surat Municipal Corporation for the purpose of construction of water works and

the total area of the aforesaid survey numbers required was 55361 sq mts (Annexure – F).

In the meanwhile, in the Month of January / February, 1996, the followers of Ashram of Asharam Bapu – respondent No.4 encroached upon the said land. Though the petitioner has been cultivating the said land by paying land revenue in view of the directions of the State Government after acquisition, the possession of the said land was snatched away by the followers of the Asharam Bapu Ashram. Nearby the land of the petitioner, the land bearing Survey No.103 towards the otherside, the embarkment, there is Ashram of Asharam. The management of the aforesaid Ashram is gradually encroaching on the lands. The inmates of the Ashram were acting high handedly and were also using force against the officers of the Municipal Corporation when they tried to remove the encroachment. Due to fear of the followers of Asharam Bapu, petitioner could not dare to file complaint which is evident from the fact that even the officers of the

Municipal Corporation who had gone to take possession of the land owned by the petitioner and encroached upon unauthorizedly by Ashram Bapu Trust, they were attacked with deadly weapons and some of them received even serious injuries. News were also published in the news paper, however, police did not take any action keeping in view high links of the followers of Ashram Bapu. Annexure – G Collectively are the news items published in the local news papers. That the said Asharam Bapu is having large number of followers who are very influential and having political links and even head strong also. They attacked on the officers of the Corporation. As Asharam Bapu and his followers were having good contacts and high links with the State administration and politicians and as a result of which, though the said lands were decided to be allotted to the Corporation for construction of the water works, they obtained orders from the Government regularizing the lands on which unauthorized encroachment was made by them and instead compelled Government to take decision to

acquire other lands of village Rander for the purpose of construction of water works and accordingly the order came to be passed on 3.8.1998 to allot some other land to the Surat Municipal Corporation. In the meantime, the State Government passed an order dated 24.1.1997 regularizing the unauthorized encroachment made by the followers of Asharam Bapu made upon 34400 sq mts of land upon land bearing Survey Nos. 103/1, 103/2 and 104/2 situated at village Jahangirpura, Choryasi, Surat. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs.

4.Shri N.M.Kapadiya, learned advocate appearing for the petitioner has submitted that the land upon which an encroachment was made by the said Asharam Bapu Trust was acquired by the State Government under the provisions of the Land Acquisition Act for “Pala Yojana” and as has been seen in the case of other villages i.e. Rander, Adajan, etc., the

lands of the petitioner situated at Jahangirpura, if not required for public purpose should be returned back to the petitioner on permanent basis and the same cannot be allotted to the respondent No.4 by paying premium to high handed action and unauthorized encroachment. It is also further submitted that in fact, the very land upon which the respondent No.4 encroached upon and for which the regularization order came to be passed was needed by the Surat Municipal Corporation – a public authority for water works i.e. public purpose and inspite of that due to political influence and for other reasons, the encroachment made by the respondent No.4 came to be regularized, which is absolutely illegal, mala-fide and arbitrary. It is also further submitted by him that in fact earlier the orders were already passed on 21.9.1993 to return the lands to the original land owners – agriculturists. It is also further submitted that in fact, the Special Civil Application No. 303 of 1997 was pending before this Court filed by some social workers in which it was

prayed to direct the State Government to grant the lands in question to the Surat Municipal Corporation for the establishment of the water works for Jahangirpura, Adajan and Rander area and in which it was also prayed for an appropriate order directing the respondents authorities to take appropriate prompt action for the purpose of removal of encroachment on the land in question and inspite of the aforesaid facts and during the pendency of the said Special Civil Application, the State Government took a hasty decision to regularize the encroachment made by the respondent No.4 and without affording any opportunity of being heard to the petitioner. It is submitted that the decision to regularize the unauthorized encroachment made by the respondent No.4 is in breach of principles of natural justice and the same is taken with ulterior motive and under undue influence and on account of some extraneous political consideration. It is further submitted that the decision of the Government in regularizing unauthorized and illegal encroachment would be

paying premium to high handedness of the inmates of Asharam. It is further submitted by him that it is the modus operandi of the inmates of the Asharam Bapu – followers of the Ashram Bapu to encroach the Government land of any kind situated nearby the Ashram gradually by hooks or cooks. It is further submitted that if the Government does not want the said land for the construction of the water works, the same should be returned to the original owners of the land on permanent basis as has been done in other cases. It is further submitted that the action of the respondents in not returning the land to the original owners is discriminatory and violative of the Article 14 of the Constitution of India as so far as village Rander and Adajan are concerned, the remaining lands which were acquired for the Pala Yojana and which were unutilized and/or not required further for Pala Yojana have been returned to the concerned agriculturists and so far as the petitioner and other agriculturists of Jahangirpura village are concerned, not only the lands have not been returned to them but the

unauthorized occupation and encroachment made by the respondent No.4 on the said land have been regularized by the State Government. It is further submitted that though the Government has in principle agreed to return back the unutilized agricultural land to the original agriculturists on permanent basis, the Government without assigning any reasons changed the decision and decided to regularize the unauthorized encroachment made by the respondent No.4 which is absolutely arbitrary, mala-fide, illegal and based on extraneous consideration and political motive and is passed in colourable exercise of the powers. It is also further submitted that in fact, the lands were allotted to the petitioner and other agriculturists on Ek Sali basis for the purpose of cultivation and they were in possession of the land in question which came to be snatched by the administrators of the Ashram and the followers of the Asharam Bapu. It is further submitted by him that as stated above even the lands in question which was encroached upon by the respondent No.4 and which came to be

regularized was in fact needed by the Surat Municipal Corporation for public purpose for which a resolution was also passed and at one point of time the State Government has also took a decision to allot the land, still only with a view to favour the respondent No.4, the said decision was not acted upon. Thus, the State Government acted illegally and arbitrarily and has given more importance to the private interest rather than the public interest and that too by regularizing the encroachment of huge lands made by the respondent No.4. It is further submitted that in fact, the said decision was taken with a view to frustrate the aforesaid Special Civil Application No.303 of 1997. It is also further submitted that in fact, the construction of the water works for the people of village Adajan, Rander and Jahangirpura was needed and the same was in public interest, still the State Government gave more weightage to the interest of the person and/or Ashram who has encroached upon the Government land. Thus, it is requested to allow the present Special Civil

Application by quashing and setting aside the order passed by the State Government regularizing the unauthorized encroachment made by the respondent No.4 on the land which was acquired by the State Government which was originally belonging to the petitioner and other agriculturists and which was acquired under the provisions of the Land Acquisition Act for Pala Yojana and as the same is not needed by the State Government for the purpose for which the same was acquired, to return the land to the petitioner and other agriculturists of village Jahangirpura as has been done in the case of other agriculturists of village Rander, Adajan, etc.

5.The petition is opposed by the respondent No.4 – Ashram. An affidavit-in-reply is filed on behalf of the respondent No.4 – Ashram. It is submitted that the present Special Civil Application is required to be dismissed on the ground of delay and laches as the order impugned in the present petition is dated January 3, 1997 whereby, the possession of

the respondent No.4 – Ashram admittedly since 1984 has been duly regularized by the State Government and the present Special Civil Application has been filed in the year 1999. It is submitted that the respondent No.4 - Ashram is carrying out its multifarious socio-economic spiritual activities, which are legally permitted by the State Government under the provisions of the Bombay Land Revenue Code and therefore, there is no illegality committed by the State Government in regularizing the encroachment and allotting the land in favour of the respondent No.4 – Ashram. It is further submitted that the petitioner has no locus now to challenge the action of the State Government in regularizing the encroachment allotting the land to the respondent No.4 – Ashram as once the land of the petitioner has been acquired under the provisions of the Land Acquisition Act, the petitioner do not have any right over the land and the State Government can deal with the land. It is also further submitted that the contention on behalf of the petitioner that as the purpose for

which the land was acquired does not exist and therefore, the land is to be reallotted and/or returned to the original land owners, cannot be accepted. It is further submitted that the land in question is allotted to the respondent No.4 – Ashram for the public purpose and that too for a consideration. It is also further submitted that pursuant to the order passed by the Collector, Surat dated 30.1.2006 an amount approximately to the tune of Rs. 30 Lacs came to be paid by the respondent No.4 – Ashram in favour of the State Government. No other submissions have been made on behalf of the respondent No.4 – Ashram except challenging the locus of the present petitioner and that the land is allotted to the Ashram for the public purpose and the possession of the respondent No.4 – Ashram has been regularized in accordance with law and therefore, it is requested to dismiss the present petition.

6. No reply is filed on behalf of the State Government. In the facts and circumstances of the

case and to know how the decision was taken by the State Government to regularize the encroachment made by the respondent No.4 – Ashram and that too the encroachment on the huge land admeasuring 34,800 sq mts that too in the prime locality of Surat city and more particularly, when the land was needed by the Surat Municipal Corporation for public purpose, this Court called upon the State Government to produce the original File and the learned Advocate General produced the said File through Chief Secretary, Revenue Department, State of Gujarat. On going through the entire File and the decision making process, certain shocking facts have come out which will be discussed hereinafter. However, considering the entire File, the learned Advocate General on the basis of the instructions from the Chief Secretary, Revenue Department, State of Gujarat, has conceded that the impugned order and the action of the State Government in regularizing the encroachment in favour of the respondent No.4 – Ashram and that in allotting the land in question to the respondent No.4 – Ashram is

absolutely illegal and the same cannot be sustained in the eyes of law. However, the learned Advocate General has submitted that the State Government is not in a position to pass any further order correcting their mistake and/or to set aside the orders and/or revoking and recalling the order which is impugned in the present Special Civil Application. Thus, the State Government is not in a position to defend their action for regularizing the unauthorized encroachment made by the respondent No.4 – Ashram and has conceded that the impugned order and the action is absolutely illegal.

7. An affidavit-in-reply is filed on behalf of the Surat Municipal Corporation affirmed by the Town Planner. It is submitted that since the Corporation has demanded the land bearing Revenue Survey Nos.103 to 109 for Water Works, the application made by the applicant has been filed vide communication dated 4/11.12.1995.

It is also further submitted that the Standing Committee of the Corporation by resolution Nos.1845 dated 18.12.1989 and thereafter General Body by resolution No.301 dated 24.1.1990 passed a resolution for demand of the land situated at village Jahangirpura bearing Revenue Survey Nos.103 to 109 admeasuring total area as 84,424 sq mts for Water Distribution Works. That the proposal was made to the Collector by letter dated 7.2.1990 by the Corporation. That thereafter the Administrator vide resolution No.302 dated 27.5.1994 passed a resolution for the land in question of Revenue Survey Nos.103 to 109 i.e. the land to be obtained subject to conditions laid down by the State Government vide letter dated 21.9.1993 by Narmada and Water Resources Department, Gandhinagar. It is also further submitted that for the land in question again the proposal was made to the Collector vide letter dated 6.7.1994 by forwarding the copy of the resolution No.302 dated 27.5.1994 and the State Government agreed in principle to allot the land in question to the Corporation for

Water Distribution Works and in that regard the Section Officer of Narmada and Water Resources Department had written letter dated 21.9.1993 to the Executive Engineer, Irrigation Department, Surat. It is also further submitted in the reply that for the said revenue survey numbers the land in question is also reserved in revised development plan by SUDA i.e. for Water Distribution Centre for the respondent – Corporation. It is also further submitted that the respondent No.3 is local self Government working for the betterment for the citizens of the Surat and the Corporation provides basic civil facilities and amenities to the citizens of the Surat and one of their main duty is to provide drinking water to the citizens. It is also further submitted that therefore the Corporation has to carry out Water Distribution Works for the said area and the land in question is required to be acquired by the respondent – Corporation for the Water Distribution Centre.

8.Before considering the rival submissions made on

behalf of the respective parties, at this stage, it is required to point out the facts which has come out from the relevant File to appreciate how and in what manner such an illegal and arbitrary decision has been taken in favour of the respondent No.4 – Ashram by which, encroachment made on the huge parcels of land admeasuring 34,800 sq mts of land in the prime locality of Surat city has been regularized in favour of the respondent No.4 – Ashram inspite of the fact that the very land was needed by the Surat Municipal Corporation – a public authority for public purpose. It is also required to be noted that the Officers on administrative side had put up their notings that the land is needed by the Surat Municipal Corporation for public purpose and therefore, the same cannot be regularized in favour of the respondent No.4 – Ashram and inspite of that, the then Revenue Minister, State of Gujarat, Shri Atmaram Patel, directed to regularize the encroachment made by the respondent No.4 – Ashram.

9.From the relevant files produced by the State Government it has come out that the lands in question came to be acquired for “Pala Yojana” along with the lands of other villages i.e. Rander and Adajan in the year 1977. As the lands were not needed for the purpose for which the same were acquired and the lands bearing Revenue Survey Nos.103 to 109 admeasuring 84,424 sq mts situated at village Jahangirpura, Surat, was required by the Surat Municipal Corporation for the Water Works Project, the Standing Committee of the Surat Municipal Corporation passed a Resolution No. 1845 dated 18.12.1989 to submit a proposal to the State Government for the allotment of the said land. Thereafter the General Board of the Surat Municipal Corporation passed a Resolution No. 301 dated 24.1.1990 for demand of the aforesaid land. Necessary proposal was sent to the Collector, Surat by the Surat Municipal Corporation by letter dated 7.2.1990. In the meantime, the Collector, Surat passed a resolution dated 10.2.1991 ordering to return the agricultural lands to the original land

owners of village Adajan, Surat (the lands in question were acquired for “Pala Yojana” along with the petitioner's land). The State Government i.e. the Narmada and Water Resources Department by its communication dated 21.9.1993 addressed to the the Executive Engineer, Surat Irrigation Division, Surat granted the conditional permission/approval to allot the land to the Surat Municipal Corporation for Water Works Project. The Executive Engineer, Surat also granted necessary permission/ approval to allot the lands in question vide communication dated 7.3.1994. In the meantime, the State Government vide its order dated 21.9.1993 No. FW/A/1092/1362(7)/J-1 decided to return the un-utilized lands of the petitioner and other agriculturists, however, in the meantime, there was a proposal of the Surat Municipal Corporation for the very land for Water Works Project and therefore, their applications were filed. Apropos the communication of the State Government, Narmada and Water resources Department dated 21.9.1993 as well as the communication by the Executive

Engineer, Surat dated 7.3.1994, the administrator of the Surat Municipal Corporation vide Resolution No.302 dated 27.5.1994 accepted all the conditions and passed a Resolution for the aforesaid lands and agreed to abide by the conditions imposed by the State Government by letter dated 21.9.1983 by Narmada and Water Resources Department, Gandhinagar and to get the aforesaid lands. Thereafter, the Collector, Surat sent his opinion to the Deputy Secretary, Revenue Department, State of Gujarat vide communication dated 13.2.1996 as well as the communication dated 18.12.1996 and opined that the lands in question be allotted to the Surat Municipal Corporation for Water Works Project. Even the Commissioner of Surat having come to know that the respondent No.4 is trying to get the said land on getting the encroachment regularized, vide communication dated 16.2.1996 addressed a letter to the Secretary, Revenue Department, objecting the regularization of such unauthorized encroachment and requested to allot the lands in question to the Surat Municipal Corporation which was needed for

the public purpose. Even the Mayor of the Surat Municipal Corporation also objected to the regularization of the encroached land and requested to consider the proposal of the Surat Municipal Corporation for allotment of the aforesaid lands for Water Works Project. For the first time, the respondent No.4 – Ashram submitted a formal application to the Secretary, Revenue Department on 29.3.1996 for the allotment of the aforesaid lands and regularizing the encroachment made by them upon 34,400 sq mts of land by further submitting that the Surat Municipal Corporation should not insist for the land which is encroached upon by them and they may opt for another land. It appears that the said application was further processed and all throughout till 27.12.1996 all the concerned authorities i.e. Deputy Secretary, Revenue Department, Narmada and Water Resources Department, and Collector, Surat objected to regularizing the encroachment in favour of the respondent No.4 and recommended to consider the proposal of the Surat Municipal Corporation for allotment of the said

lands for Water Works Project. The File went to the then Revenue Minister on 27.12.1996, the concerned Minister directed to regularize the encroachment made by the respondent No.4 made upon 34,400 sq mts of land. That thereafter the File was processed for regularization. For the purpose of even regularizing the encroachment and allotting the lands in question to the respondent No.4, the aforesaid lands which were already acquired under the provisions of the Land Acquisition Act were required to be resumed by the State Government and by order dated 4.1.1997, the Collector, Surat passed an order resuming the land to the State Government and immediately necessary entries were made and within a period of 20 days only the entire proceedings were completed and the impugned order came to be passed regularizing the encroachment made by the respondent No.4 on payment of market price as well as penalty of two and half times. It appears from the Files that even the encroachment was to be regularized on payment of penalty of two and half times, the concerned Minister noted on the

file on 28.1.1997 that considering the activities of the respondent No.4 – Ashram the penalty of only one time be recovered. It is required to be noted at this stage that even the Deputy Secretary has also noted at that time that the activities of the respondent No.4 – Ashram will not come within the definition of public purpose and it is required to be noted that the lands in question were in an agricultural zone and in the part of the lands non-agricultural activities were going on.

10.From the above and on going through the entire File, it has come out that right from 1990, the Surat Municipal Corporation was requesting for the aforesaid lands for public purpose i.e. Water Works Project. It has also emerged from the File that for the purpose of Water Works Project on the aforesaid land a project was prepared, survey was carried out and it was found that if the Water Works Project is established on the lands in question at Jahangirpura, it is likely to save the costs by Rs. 15 Crores and the said project is

economically viable and in public interest and till 19.12.1996 right from the Collector, Surat, Executive Engineer, Surar Irrigation Division, Surat, Deputy Secretary, Revenue Department, Secretary, Revenue Department, and Chief Secretary, Revenue Department all opined in favour of the Surat Municipal Corporation for the allotment of the lands in question for Water Works Project and not to regularize the encroachment of the respondent No.4. Even it was pointed out that the activities of the respondent No.4 cannot be considered to be within the definition of public purpose. All of a sudden, an application was made by the respondent No.4 – Ashram and the concerned Minister on 27.12.1996 directed to regularize the encroachment made by the respondent No.4 upon 34,400 sq mts of land and rest of the lands be allotted to the Surat Municipal Corporation for the Water Works Project. At this stage, it is required to be noted that the very land in question were put under reservation for Surat Municipal Corporation for Water Works Project in the Draft Development

Plan under the T.P. Act still the public interest is given to go by and the encroachment made by the respondent No.4 upon 34,400 sq mts of land in the prime location of Surat city has been regularized giving premium to the illegality.

11.The matter does not end there, even, subsequently also, the favour has been shown in favour of the respondent No.4. On going through the entire File with regard to regularizing the encroachment and allotment of the lands in favour of the respondent No.4, it has come out that after the notings by the concerned Minister to regularize the encroachment there was a noting that the encroachment can be regularized on payment of penalty of two and half times, however, the concerned Minister again shown undue favour and though the Deputy Secretary in its noting has clearly noted that the activity of the respondent No.4 does not fall within the definition of public purpose still notings were made by the concerned Minister that the encroachment be regularized on payment of penalty of one time only

and the same is also contrary to the policy of the State Government. Thus, there is an undue favourtism shown in favour of the respondent No.4.

12.From the above, the action of the respondents in regularizing the encroachment made by the respondent No.4 is not only illegal and arbitrary but it is also mala-fide and it has been taken in undue haste. The then concerned Revenue Minister noted on the File and directed to regularize the encroachment made by the respondent No.4 on 34,400 sq mts of land on 27.12.1996. As the lands encroached upon by the respondent No.4 were acquired under the provisions of the Land Acquisition Act and the acquiring body was the Executive Engineer, Surat Irrigation Division, Surat, it was not possible to regularize the encroachment by the State Government and to allot the same to the respondent No.4 unless the State Government resumes the said land back and accordingly by a memorandum dated 3.1.1997, the Revenue Department, State of Gujarat directed the

Collector, Surat to resume the lands and to take over the charge of the lands in question and enter the name of the State Government in the revenue records and accordingly, by an order dated 4.1.1997, the Collector, Surat directed that the name of the State Government be entered in the village records and accordingly, the name of the State Government was entered in the village record on 6.1.1997. In the meantime, on 3.1.1997, the State Government directed the Collector, Surat to carry out the necessary procedure to regularize the encroachment made by the respondent No.4. The Collector, Surat submitted proposal dated 8.1.1997 to the State Government for giving the aforesaid lands on lease or by way of sale to the respondent No.4 – Ashram and pursuant to the aforesaid proposal, the Revenue Department, State of Gujarat by resolution dated 24.1.1997 regularized the lands in question in favour of the respondent No.4. Thus, the entire exercise came to be completed within a period of just 20 days. These shows the mala-fide intention on the part of the concerned persons and

authorities and these shows how hurriedly the encroachment came to be regularized.

13.So far as the contention on behalf of the respondent No.4 that the petitioner has no locus and/or right to file the present Special Civil Application and/or has no right to pray for such relief, which has been prayed in the present Special Civil Application is concerned, it is required to be noted that the petitioner is the erstwhile owner of some lands in question and so far as the respondent No.4 is concerned, he has encroached upon the Government land, which was acquired under the provisions of the Land Acquisition Act, which was originally belonging to the petitioner. When instead of re-granting the land to him, if the orders are passed in favour of wrong doer who has encroached upon the Government land against all rule of laws, certainly, he would have a better claim than the respondent No.4 who has no respect for law. More particularly, when so far as the lands situated at other villages like

Rander and Adajan, who were acquired along with the petitioner's lands for the very purpose i.e. “Pala Yojana” came be released and/or re-granted in favour of the original land owners and therefore, the petitioner has a legitimate expectations to re-grant the land to him if it is not needed for other public purpose more particularly the encroachment made by the respondent No.4 on the said land is to be regularized and therefore, the contention on behalf of the respondent No.4 cannot be accepted.

14.It is required to be noted that though the order was passed on 24.1.1997 to regularize the encroachment made by the respondent No.4, the Collector, Surat has passed an order only on 26/30.1.2006 determining the amount to be paid by the respondent No.4 towards the price of the land and one time penalty, which is recently paid and therefore, the State Government/Collector, Surat may return the amount which is recovered from the respondent No.4 pursuant to the order dated 26/30.1.2006 and even the respondent No.4 is liable

to pay the mesne profit for continuing in the possession of the lands in question illegally and encroaching upon the Government land for which necessary proceedings be initiated for which it will be open for the State Government and/or the Collector, Surat to initiate the proceedings.

15.As stated above, the respondent No.4 encroached upon the huge land admeasuring 34,400 sq mts of land in the prime location of Surat city and the valuation of the same may be more than 3 to 4 Crores approximately and the encroachment upon the said land has been regularized by the respondents on payment of more than Rs.14 Lacs. As held by the Hon'ble Supreme Court in case of ***Parashram Thakur Dass & Others*** **V/s.** ***Ram Chand & Others*** reported in ***AIR 1982 Supreme Court P.872***, ***Netai Bag & Others*** **V/s.** ***The State of West Bengal & Others*** reported in ***AIR 2000 Supreme Court P.3313***., the Government land and/or Panchayat land is normally required to be disposed of by public auction. It is true that it is also observed by the Hon'ble Supreme Court that

in an exceptional case the special reasons be recorded by the State Government when the land can be sold or disposed of without auction. However, if the two decisions are read as a whole, then, it is held by the Hon'ble Supreme Court that the normal rule is to dispose of the land by public auction. Thus, the impugned action/order is required to be set aside on this ground also, more particularly, in the present case, the lands are and were needed by the Surat Municipal Corporation for a public purpose and not only that but even the same could have been utilized for other/public purpose by local authority and/or other authorities. However, certainly, the encroachment made by the respondent No.4 was not required to be regularized and even as conceded by the State Government, the orders passed by the State Government and the Collector, Surat in regularizing the encroachment in favour of the respondent No.4 is illegal and cannot stand, however, it appears that for certain reasons the State Government does not want to ratify their mistake and/or to cancel those orders in the other

words the State Government does not want to take any harsh decision.

16.Now, considering the aforesaid facts and the notings made by the Head of the concerned Department, more particularly, by Deputy Secretary, State of Gujarat, Collector, Surat and the Secretary of the concerned Departments and that all of them opined that the request made by the Surat Municipal Corporation for the allotment of the aforesaid lands be considered as the same is in public interest and for the public purpose and that the encroachment made by the respondent No.4 – Ashram may not regularized and the activities of the respondent No.4 - Ashram cannot be considered within the definition of “public purpose” as per the policy of the State Government and inspite of the aforesaid notings, the concerned Revenue Minister, at the relevant time, directed to regularize the encroachment made by the respondent No.4 – Ashram and to allot the same to the respondent No.4 – Ashram after resuming the land by

the Collector, Surat and to allot the same to the respondent No.4 – Ashram on payment of price determined by the Town Planner and on recovering the penalty of two and half times. This shows how in an illegal and arbitrary manner an encroachment of huge land i.e. the land of 34,800 sq mts in the prime locality of Surat city came to be regularized in favour of the respondent No.4 and that too on recovering the penalty of only one time, though initially the decision was taken to recovery the penalty for two and half times.

17.It is required to be noted that as the lands of other villages, which were acquired along with the petitioner's land i.e. the land of village Rander, etc., were regranted/reallotted/returned to the concerned land owners as the purpose for which the lands were acquired was not needed and therefore, the petitioner along with other persons submitted an application for returning the said lands to them. However, their application came to be filed on the ground that the said land is needed by the

Surat Municipal Corporation for public purpose and on the other hand the application submitted by the respondent No.4 dated 29.3.1996 came to be entertained and inspite of the aforesaid notings by the concerned officers, the land came to be allotted to the respondent No.4 – Ashram by regularizing the encroachment made by it.

18.From the File it appears that it was pointed out to the concerned Minister that for the very land the original land owners have requested to return the land but the concerned Minister at one place has noted that the concerned land owners have given their consent that they do not want the land and the land be given to the Ashram. However, there is a noting made by the Deputy Secretary that all those so called signatories have given affidavits that there is no such writing given by them and the said so called alleged writings are forged and fabricated by the respondent No.4 – Ashram's administration. Thus, the original land owners have disputed that such a writing has been given and

inspite of the aforesaid facts, the land came to be allotted to the respondent No.4 – Ashram and the encroachment came to be regularized.

19.It is also required to be noted at this stage that initially when the encroachment was made by the Ashram, the officers of the Surat Municipal Corporation went to demolish and/or remove the encroachment and it has come out on the record that some persons on behalf of the Ashram attacked on the officers of the Surat Municipal Corporation and they have indulged into illegal activities. Though the same is mentioned in the petition, the same is neither denied on behalf of the respondent No.4 – Ashram nor by the Corporation. This shows how the respondent No.4 – Ashram encroached upon the huge land, which was, in fact, given by the State Government to the concerned land owners for cultivation on Ek Sali basis and that they were in possession of the lands in question pursuant to the order passed by the State Government allotting the land on Ek Sali basis for the purpose of

cultivation as per the policy of the State Government.

20.Though it is the contention on behalf of the respondent No.4 – Ashram that they were in possession of the lands in question since last 24 years, however, the same is factually incorrect and/or the same is not substantiated by the respondent No.4. It is also to be noted that in the application the respondent No.4 has submitted that the Surat Municipal Corporation should not insist for allotment of the land in question and the proposal submitted by the Collector, Surat to the State Government for allotting the land to the Corporation for Water Works Project is not justifiable and is likely to hurt the religious feelings of the other persons and the Surat Municipal Corporation should apply for another land and the Surat Municipal Corporation should not insist for allotting the land which is in possession of the Ashram. In the application dated 29.3.1996 nowhere it has been mentioned that they

are in possession of the land in question since last 24 years. Even it is not the case of the Collector, Surat and/or the State Government that they are in possession of the land since last 24 years and even otherwise, the same cannot be true as the very land and other lands came to be allotted to the original land owners for cultivation on Ek Sali basis which was in force till 1996-97 and not only that but on 4.1.1997 the land was resumed by the Collector, Surat and thereafter, within twenty days the impugned orders came to be passed.

21.So far as the contention on behalf of the respondent No.4 that the Ashram is carried out his multifarious socio-economic spiritual activities and other religious activities and therefore, the encroachment made by the respondent No.4 came to be regularized and the land in question came to be allotted is concerned, at the outset, it is required to be noted that all the Government authorities and the officers have specifically

noted in the files that the activities of the respondent No.4 would not fall within the definition of public purpose as per the Government policy. Even otherwise, under the guise of socio-economic activities, it does not give a license to the respondent No.4 to encroach upon the Government land which has been acquired under the provisions of the Land Acquisition Act for public purpose and when the lands in question is/was needed by the local authorities for Water Works Project for the citizen of Surat, to encroach upon the Government land cannot be said to be carrying on socio-economic activities and by that itself.

22.It is the contention on behalf of the respondent No.4 that they have paid Rs. 30 Lacs for the land in question, however, it is to be noted that area of the land is 34,800 sq mts and that too in the prime location of Surat and it is worth more than Rs. 4 Crores. Here also illegality has been committed on behalf of the respondent No.4 and the respondent No.4 is benefited. At every stage, there

is illegality committed on behalf of the State Government and as stated above as such the State Government has conceded that there is an illegality committed by them.

23.It is required to be noted that whenever the Government land is required to be allotted in that case, certain procedure is required to be followed such as, inviting the applications/tenders so that maximum price can be fetched and the other persons, who can be more needy than the respondent No.4, can be allotted the land. In the present case, the land has been allotted in favour of the respondent No.4 without following any procedure and with a view to favour the respondent No.4 under the guise of religious feelings and/or so called religious activities.

24.So far as contention on behalf of the respondent No.4 that the petitioner has no locus and/or has no right for re-allotment of the land in his favour after completion of the acquisition proceedings and

when the land has been acquired under the provisions of the Land Acquisition Act and once the land has been acquired, the State Government can deal with the land is concerned, normally it is true, but however, in view of the fact that the other land owners of other villages whose lands were acquired along with the petitioner for the very purpose are returned, it cannot be said that the petitioner has no right at all. It is also required to be noted at this stage that the application made by the petitioner was not decided on merits, however, the same was filed by communication dated 4.11/12.1995 by the Collector, Surat mentioning that the land is required for Surat Municipal Corporation. Thus, on one hand, the application of the petitioner came to be filed for re-allotment of the land on the ground that the same is needed for Surat Municipal Corporation for public purpose and on the other hand, the very land came to be allotted to the respondent No.4 by regularizing the encroachment made by the respondent No.4. If it is not a discriminatory

treatment than there cannot be any other example of discriminatory treatment. Thus, it cannot be said that the petitioner has no locus and/or right to file the present Special Civil Application and/or cannot pray for reallotment of land more particularly, when the land has been allotted in favour of the respondent No.4, who has no respect for law meaning thereby, who has encroached upon the huge land admeasuring 34,800 sq mts and that too in the prime locality of Surat city and even at the relevant time, it is worth more than Rs. 3 to 4 Crores and it has been allotted in favour of the respondent No.4 for an amount of Rs.14 Lacs (Rs. 30 Lacs inclusive of penalty) only that too without following any due procedure.

25.Before parting with this judgment, it is to be observed that the of late tendency to encroach upon the Government land has been increased day by day and that too by the trust/religious institutions like the respondent No.4. First they encroach upon the Government land under the guise of some

religious activities and/or alleged public purpose thereafter, the applications are moved to regularize the said encroachment under the guise of religious activities and pressurize the Government to regularize the said encroachment even by threatening that the religious feelings are likely to be hurt. First of all, it is the duty of the Government and Government authorities to see that there is no encroachment on the Government land, more particularly, the lands which have been acquired for public purpose under the provisions of the Land Acquisition Act and/or which are reserved under the relevant T.P.Scheme under the provisions of the Gujarat Town Planning Act. It should be the endeavor of the Government and the Government authorities to see that illegal encroachment must be removed and the lands which have been acquired for public purpose under the provisions of the Land Acquisition Act and/or under other Acts should be utilized firstly for the purpose for which it is acquired and if the land is not needed for the purpose for which it is acquired, it should be used

for any other public purpose. The Government and/or the Government authorities and/or the local authorities should be very slow in regularizing the encroachment and that too regularizing the encroachment made on the land which has been acquired for public purpose. The Government should not hesitate in taking harsh steps for removing the encroachment made by the trust/religious institutions like the respondent No.4 as it is the duty of the State Government to see that the rule of law is maintained. When a poor landless homeless person put up a hut and/or a small kachchha cabin, the Government authorities and/or the local authorities acts promptly, however, it is found that whenever an encroachment is made by some religious institutions/ trust and/or others like the respondent No.4, inspite of opinions against regularizing the encroachment, a decision is taken like in the present case by the highest authorities in the Government like Ministers and/or M.L.As. and the encroachments are regularized. As stated above, the endeavor of the State Government and the

Government authorities should be to remove the encroachment and not to regularize the encroachment, otherwise, it will be giving a premium to the wrong doer. All the wrong doers, who are less in number, if they are allowed to rule the law or govern the Government then there would not be liberty but it would prove to be a death knell in the democratic strophin. In the present case, the concerned Revenue Minister was readily available to the wrong doer i.e. the respondent No.4 and inspite of the fact that the very land was needed by Surat Municipal Corporation for public purpose, the respondent No.4 insisted that the Surat Municipal Corporation should opt for another land by threatening that the religious feelings are likely to be hurt. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter, how powerful he is and how rich and/or influential he may be. As observed by the Hon'ble Supreme Court in case of ***T.N.GODAVARMAN THIRUMULPAD THROUGH THE AMICUS***

***CURIAE V/s. ASHOK KHOT AND ANOTHER*** reported in (**2006) 5 SCC Page-1,** ***"Any country or society professing the rule of law as its basic feature or characteristic does not distinghish between high or low, weak or mighty."*** It is also further observed by the Hon'ble Supreme Court in the aforesaid judgment that ***"In our democratic polity under the Constitution based on the concept of "rule of law" which We have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system, the law is supreme."*** Thus, as stated above, the Government should never hesitate in taking harsh steps while implementing the rule of law. Sometimes, in the larger public interest the Government is required to take some harsh steps, which may not be liked by a group of persons like the respondent No.4. If it would have been a case of some other person, he would have been subjected to Preventive Detention under PASA on the allegation of land grabbing, however, in the present case leniency has been shown in favour of respondent No.4 and the concerned person by

regularizing the encroachment.

Whenever the Government lands have been encroached upon and the applications are submitted for the regularization of the said encroachment, as stated hereinabove, the endeavor should be not to regularize the encroachment and the Government and/or the Government authorities must find out whether the lands is needed for any other public authority for public purpose or not and/or the land upon which the encroachment is made can be used and utilized for other public purpose or not. Whenever the Government lands are disposed of it should be disposed of only after inviting the applications/tenders from the needy persons and/or other persons and/or from the public at large and endeavor must be to fetch the maximum price (if at all the lands are to be disposed of).

26.From the above, it appears that the State Government has considered the private interest more

important rather than the public interest. Normally, the rule is that when there is a conflict between the private interest and the public interest, public interest has to be given more weightage and importance. However, in the present case, though the land was needed by the Surat Municipal Corporation for Water Works, which is a public purpose, the same came to be allotted to the respondent No.4 by regularizing the encroachment and that too against the notings made by all the concerned highest officers of the State and that too in one paragraph by the concerned Revenue Minister and that too on wrong factual premises. The lands in question were acquired by the State Government for a public purpose “Palas” and subsequently, it was found that the purpose for which the land is acquired is not there and therefore, the land is not needed for the said purpose. In the meantime, on the applications made by the other land owners of other villages i.e. Rander, etc., the same were returned to the original land owners on returning the compensation

paid to them. When the petitioner submitted an application, the same was filed on the ground that the same is needed by the Surat Municipal Corporation for the Water Works Project. The Surat Municipal Corporation right from 1993 has requested for allotment of the land in question for Water Works Project and all the authorities opined that the request made by the Corporation be considered favourably and the same be allotted to them for public purpose. All of a sudden, in the year 1996, the respondent No.4 has submitted an application on 29.3.1996 for allotment of the land under the guise of religious feelings and as stated above in the application itself it is stated that the Surat Municipal Corporation should not insist for the land for Water Works and they may opt for other land and the proposal of the Collector, Surat to the State Government for the allotment of the land to the Surat Municipal Corporation is not justifiable and is likely to hurt the religious feelings of other persons. An Ashram, who has encroached upon the Government land is submitting

to the State Government that the public authority i.e. Surat Municipal Corporation should not insist for the land which is encroached upon by them and they should opt for other land and on such an application, inspite of the notings by all the concerned highest officers, the Minister of the State directed to regularize the encroachment and allot the land to the respondent No.4 who has encroached upon the Government land to the extent of 34,800 sq mts that too in the prime locality of Surat city, which is absolutely illegal and arbitrary, which requires to be quashed and set aside. The land in question could have been allotted to other authorities and could have been used for other public purposes such as Water Works Project and/or other public purposes. It is required to be noted that the very land in question was reserved for public purpose in the Draft Development Plan of the Surat Municipal Corporation/SUDA and inspite of that the land has been allotted to the respondent No.4, which cannot be sustained in the eyes of law. Under the

circumstances, the impugned orders passed by the State Government and the concerned authorities regularizing the encroachment made by the respondent No.4 on the land bearing Survey Nos.103 to 109 admeasuring 34,800 sq mts and to allot the land to the respondent No.4 and all the consequential orders are hereby quashed and set aside.

27.The learned advocate appearing for the respondent No.4 was called upon to make his submission and to show cause why an order should not be passed to return the land to the State Government and he has submitted that for the very land they have paid substantial amount and they are carrying on religious activities and therefore, the order may not be passed to return the land. However, considering the facts stated above when there is absolutely illegality and arbitrariness and even it is conceded on behalf of the State Government that the impugned orders and actions are absolutely illegal and when the land in question is needed for

other public purpose, the respondent No.4 is directed to return the aforesaid lands in question to the State Government, more particularly, Collector, Surat, however, they will be entitled to get back the amount which is deposited/paid by them pursuant to the order passed by the Collector, Surat dated 31.1.2006. As the orders in favour of respondent No.4 regularizing the encroachment and allotting the lands in question are quashed and set aside, as a necessary consequences, respondent No.4, its agents and servants are directed to hand over the possession of the lands in question to Collector, Surat within a period of 3 months from today and to remove the superstructure if any. If possession is not handed over to the Collector, Surat within 3 months, State Government i.e. Secretary, Revenue Department and Collector, Surat are directed to take possession of the said lands from respondent No.4 immediately by serving one week notice and the State Government and the Collector, Surat are directed to take back the possession of the lands in question from the

respondent No.4 within a period of 3 months from today and to use it for other public purpose in accordance with law and also to consider the application of the petitioner in accordance with law and on merits, if the land is not needed for any other purpose. This petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent with exemplary costs to be paid by the respondent No.4, which is quantified at Rs.15,000/- as a token exemplary costs.

[ M.R.SHAH, J.]

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